trial Judge arrived at the conclusion that, at the time when plaintiffs' attorney was alive, he and Annamalai were both "general agents of both firms" (i.e. the plaintiff firm and the third firm) his final conclusion was based on another ground. And this latter ground did not require the finding of general agency to sustain it. As I view this case, the precise extent of Annamalai's authority (if any) before the occupation has not been proved. For this reason, therefore, I do not think that the Ordinance to which I have just referred carries the matter any further. The leading feature in Mr. Charlesworth's argument was that there was direct documentary proof that, before the occupation, plaintiffs had an agent in Penang, duly appointed under a power of attorney, who had authority to receive money for his principal. He also had power to appoint a substitute attorney but there was no evidence whatever to show that, at the time he unfortunately met his death by enemy action, he had ever exercised this power. In these circumstances Mr. Charlesworth submitted that, after the death of plaintiffs' attorney, there remained no person in Penang authorised to accept money on behalf of the plaintiffs.

This submission may very well be true but it overlooks the fact that there still might have been a person, without any authority from plaintiffs, who did in fact receive the money in such circumstances as to constitute a discharge of defendant's liability. (*Barrett v. Deere*[1]). This is in fact the case advanced by Mr. Hume on behalf of the defendants *viz.* that Annamalai received the payment as the ostensible agent of the plaintiffs. The matter is put thus by the editors of *Chitty on Contracts* (20th Edition) at page 266 :—

> "Payment to an agent binds the principal, if the agent has either a real or an ostensible authority to receive payment, as for example, a person apparently entrusted with the conduct of plaintiff's business although he had not in fact any authority to receive payment."

The authorities cited in support of that view are *Barrett v. Deere*[1] and *Wilmot v. Smith*[2]. The facts in the former case were that defendant owed plaintiff some money but the precise amount so owing was in dispute. In these circumstances defendant sent a messenger to pay the amount admitted and to hand over a letter stating his objections to the items in dispute. The messenger proceeded to the plaintiff's counting-house, where he found a person sitting within a railed off area with account books near him, so he handed over the cash and letter to that person. The latter read the letter; referred to the account books and said he would say nothing in reply. He also gave a receipt for the amount actually paid. In fact the person sitting in the counting-house was not in plaintiff's employment but nevertheless the payment was held to be a valid discharge of that part of the debt which was actually paid to that person. This basis of the decision was that in a great business area no transaction could be carried on if it were not sufficient for a purchaser to send his money to the seller's counting-house and pay it to any person he finds there, whether actually authorised to receive it or not, who appears to be interested with the conduct of the business. In my view the facts of the present case are even more compelling. Defendants' representative went to the room where both plaintiffs and the third firm carried on their businesses. There he arranged terms of the loan with Annamalai, and Annamalai signed the Thavanai letter. He signed thus "Annamalai Chettiar, Agent of" the third firm "for" the plaintiffs. That letter clearly shows that the loan was repayable to the plaintiffs. Before the occupation defendant paid the interest as, and when, due to Annamalai. After the occupation, and after the destruction of the business premises, he sought out Annamalai and continued to pay him the interest. And finally, in June, 1943, the defendants repaid the capital to Annamalai. Thus the defendants knew the loan was from the plaintiffs but every single transaction was conducted between themselves and Annamalai. In the circumstances can it reasonably be suggested that they, the defendants, did not regard Annamalai as the agent of the plaintiffs?

For these reasons, with respect, I agree with the finding of the learned trial Judge that Annamalai was, for the purposes of this transaction, the ostensible agent of the plaintiffs. Consequently I would dismiss this appeal and would grant defendants their costs in this Court and in the Court below. I would also order that the $500 deposited in Court by the appellants should be paid out to defendants against their costs.

Appeal dismissed.

ONG SENG HUAT v. NYAK WAN & ORS.

[Orig. Civ. Juris. (Spenser Wilkinson, J.) September 6, 1952]

[Penang — Civil Suit No. 186 of 1950]

[Penang — Summons-in-Chambers No. 185 of 1952]

Practice and procedure — Costs — R.S.C., O. 62 r. 66(1) — Change of Solicitor — Validity of distinction between Solicitor and Client and Solicitor and Own Client taxation.

This was an application to vary the Registrar's Certificate which had allowed certain items of costs resulting from the 3rd defendant's change of solicitor. The 3rd defendant was one of three Receivers and managers of an estate and he had engaged a separate solicitor.

Held, that the English distinction between Solicitor and Client and Solicitor and Own Client taxation is not a distinction which is valid here, so that the costs incurred in making the necessary change of solicitor come within the words of O. 62, r. 66(1).

Cases referred to :—

(1) *Giles v. Randall* (1915) 1 K.B. 290.

(2) *Re Morgan (R.P.) & Co.* (1915) 1 Ch. 182.

(3) *Reed & Gray* (1952) 1 All E.R. 241.

APPLICATION IN CHAMBERS.

C. D. D. Hogan for the plaintiff.

T. E. Conaghan for the 1st defendant.

F. G. Pooley for the 2nd defendant.

Ong Huck Lim for the 3rd defendant.

Cur. Adv. Vult.

Spenser Wilkinson, J. : — This was an application in Chambers to vary the Registrar's certificate by allowing certain objections which had been raised before him and overruled.

The objections raised were to the allowance of those items of costs which resulted from the 3rd defendant having changed his solicitors. The 3rd defendant was one of three Receivers and Managers of an Estate. He left the firm of solicitors which had been acting for two of the Receivers and went to a separate solicitor. There may or may not have been good reasons for this course; but if there were not good reasons then the proper time to object was, I think, when the order for taxation was made; for if there was no ground for separate representation then there should not have been a separate bill of costs at all. I am inclined to think that the acceptance by the other parties objection of an order for taxation of the 3rd defendant's bill had the effect of letting in, as part of the costs, the expenses of obtaining the separate representation. I do not, however, base my decision upon this ground.

The Registrar in allowing these items referred to the three well-known classes of solicitor and client costs and proceeded on the basis that in all three classes of taxation the principle of taxation is the same. Before me Mr. Conaghan contended that this was wrong and relied upon the English case of *Giles v. Randall*[1]. He also referred to certain passages in *Butterworths' Costs* and to the case if *Re Morgan (R.P.) & Co.*[2]. He argued that a change of solicitors was a luxury, the costs of which should not be allowed on taxation and that the items in question were not such costs as a solicitor would reasonably incur in the ordinary conduct of his client's case within the words of Order 62 rule 66.

After a careful study of the case of *Giles v. Randall*[1] I came to the conclusion that it was not entirely in point in the present case for two reasons :—

(a) The decision dealt with a case where the costs were payable out of a fund which belonged to other parties and in which the party had no interest, which is the third class of taxation there classified; whereas the case now before me is of the second class — where costs are payable out of a common fund;

(b) The decision is based partly upon the provisions of English Order 65 rule 27(29) and partly upon a practice which is said to have existed in England for a long time. Neither the rule nor, as far as I am aware, the practice exists here.

Having come to this conclusion I found that it was to some extent supported by a recent English decision. In *Reed v. Gray*[3] Roxburgh, J., deals at some length with the judgments in *Giles v. Randall*[1] and then says :—

"That case, in my judgment, decided one thing quite clearly i.e. that the latter part of the sub-rule applies to a solicitor and client taxation with the inevitable corollary that a solicitor and client taxation cannot be assimilated to, or cannot be made identical with, a solicitor and own client taxation. In my judgment it decided nothing else."

If this be correct then the decision in *Giles v. Randall*[1] is referrable only to the English sub-rule referred to. I cannot find anything similar to this sub-rule in our Rules of Court and Counsel was unable to point to any of our rules containing similar provisions. In view of the fact that almost every other sub-rule of English Order 65 rule 27 is reproduced in our rules I can only conclude that its omission was deliberate. This would account for the fact — and in my opinion it is the fact — that no such distinction has ever been drawn in the Straits Settlements between solicitor and client and solicitor and own client taxation as is referred to in *Giles v. Randall*[1] and the textbooks there mentioned.

In my opinion, therefore, our rules of taxation differ from the English rules so that the English decisions on the subject do not decide the question. I hold that the English distinction between solicitor and client and solicitor and own client taxation — which according to Buckley, J., in *Giles v. Randall*[1] is that "in the former case the taxation is substantially a party and party taxation on a more generous scale" — is not a distinction which is valid here.

I wish to guard myself, however, against being thought to hold there is no distinction whatever between the three classes of solicitor and client taxation. There may be certain items which a taxing master might allow in one class of taxation and disallow in another; and it may be therefore that the learned Registrar went

too far in saying there was no difference in the principles of taxation in the three classes. I do not need to decide the point one way or the other and I do not do so. I content myself with holding that any distinction there may be in this Settlement between solicitor and client and solicitor and own client taxation is not sufficiently marked to justify me in upholding the present objections, even if they would have been valid in England. I think that if one of three Receivers feels that he ought to be separately represented and if it is not unreasonable for him to be so represented then the costs incurred in making the necessary change come within the words of sub-rule (1) of Order 62 rule 66.

Finally I would remark that the only passage referred to by Mr. Conaghan specifically dealing with change of solicitors is that on page 71 of *Butterworth's Costs*. It reads as follows :—

"Unless a solicitor is changed because of (death) (b) the dissolution of partnership or (c) an unavoidable circumstance, the costs of such notice of change will only be allowed as between solicitor and client."

To my mind the implication of this passage is that the costs of notice of change of solicitor are usually allowed in England as between solicitor and client. However this may be, I am of opinion that under our law the items objected to are allowable and I must, therefore, dismiss this application.

Application dismissed.

WONG KOK SAN v. W. H. SALT.

[Orig. Civ. Juris. (Callow, J.) November 12, 1948]

[Malacca — Civil Suit No. 16 of 1947]

False Imprisonment — Distinguished from malicious Prosecution — Costs.

In this case the plaintiff sued the defendant for $2,000 as damages for false imprisonment. The evidence showed that the plaintiff was stopped and detained by a Police corporal at the Police Station at the instigation of the defendant.

Held, that (1) there is no similitude or anology between false imprisonment and malicious prosecution. The consequence of the former is illegal detention, and the institution of the latter may on the face of it be manifestly legal but is without probable cause and with malicious motive; (2) on the facts the false imprisonment borne by the plaintiff was at the hands of the Police corporal as agent of the defendant and therefore the defendant was liable for damages (3) on the facts the actual detention was a short one and damages of $50 were sufficient; (4) there was nothing on the record to justify the plaintiff being deprived of his costs and therefore he was entitled to judgment for damages of $50 and costs.

Cases referred to :—

(1) *Warner v. Riddiford* 140 E.R. 1052.

(2) *Christie & anor. v. Leachinsky* (1947) 1 All E.R. 567.

(3) *Barker v. Braham & Norwood* 95 E.R. 1104.

(4) *Sewell v. National Telephone Co. Ltd.* (1907) 1 K.B. 557.

(5) *Hopkins v. Crowe* 111 E.R. 974.

CIVIL SUIT.

T. W. Ong for the plaintiff.

M. B. Brash for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Callow, J. : — The claim is for $2,000 damages for false imprisonment on the 4th of May, 1947.

The delay in bringing this action to trial was not adequately explained. Obviously after a lapse of 16 months it was impossible to expect clearly recollected versions of the precise happenings on the morning in question. Such delay must be deplored by the parties; it is excessive.

It is established that some months earlier there had been negotiations between Singapore-Malacca Coaches Ltd. (of which Company the defendant was then the Chairman) and Wee Seng Fong (7th witness and employer at the material time of the plaintiff). Wee Seng Fong was a pre-war operator of road transport on the route Malacca-Singapore, and as such he had an option to take up shares in the newly formed Singapore-Malacca Coaches Ltd.

These negotiations broke down and the agreed bundle of correspondence (Exhibits A/31 to A/46) reveal that the negotiations did not progress in a spirit of concord.

Subsequently it would appear (Ex. A/46) that Wee Seng Fong continued in some competition with Singapore-Malacca Coaches Ltd. The permit or permits of the vehicles owned and run by Wee Seng Fong were not put in, but it seems that he owned four cars licensed as hackney carriages, and thus any one of them could be hired by a single individual, but to allow separate persons to pay singly for seats contravened the Motor Regulations, and of course competed illegally with Singapore-Malacca Coaches Ltd.

Now according to the evidence of Mr. Hamilton, Assistant Superintendent of Police (3rd witness), the defendant had previously represented to him the conduct of these cars owned by Wee Seng Fong. Thus it would seem a fair inference that at the time of the alleged false imprisonment there was considerable feeling between the directors of Singapore-Malacca Coaches Ltd., and perhaps by their Chairman the defendant in particular, against the *modus operandi* of the vehicles owned and controlled by Wee Seng Fong, one of which vehicles No. M 734 being driven by the plaintiff.